

Code of Federal Regulations

TITLE 15--COMMERCE AND FOREIGN TRADE

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ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 922--NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

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Authority: 16 U.S.C. 1431 et seq.

Source: 60 FR 66877, Dec. 27, 1995, unless otherwise noted.

Subpart A--General

Editorial Note: Nomenclature changes to part 922 appear at 62 FR 3789, Jan. 27, 1997; 62 FR 67724, Dec. 30, 1997.

Sec. 922.1 Applicability of regulations.

Unless noted otherwise, the regulations in subparts A, D and E apply to all eleven National Marine Sanctuaries for which site-specific regulations appear in subparts F through P, respectively. Subparts B and C apply to the site evaluation list and to the designation of future Sanctuaries.

[62 FR 4607, Jan. 30, 1997]

Effective Date Note: At 62 FR 14815, Mar. 28, 1997, Sec. 922.1 was revised. A document announcing the effective date of this amendment will be published in the Federal Register. For the convenience of the user, the revised text is set forth as follows:

Sec. 922.1 Applicability of regulations.

Unless noted otherwise, the regulations in subparts A, D and E apply to all twelve National Marine Sanctuaries for which site-specific regulations appear in subparts F through Q, respectively. Subparts B and C apply to the site evaluation list and to the designation of future Sanctuaries.

Sec. 922.2 Mission, goals, and special policies.

(a) In accordance with the standards set forth in title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, also known as the National Marine Sanctuaries Act (Act) the mission of the National Marine Sanctuary program (Program) is to identify, designate and manage areas of the marine environment of special national, and in some cases international, significance due to their conservation, recreational, ecological, historical, research, educational, or aesthetic qualities.

(b) The goals of the Program are to carry out the mission to:

- (1) Identify and designate as National Marine Sanctuaries areas of the marine environment which are of special national significance;
- (2) Provide authority for comprehensive and coordinated conservation

and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities;

(3) Support, promote, and coordinate scientific research on, and monitoring of, the resources of these marine areas, especially long-term monitoring and research of these areas;

(4) Enhance public awareness, understanding, appreciation, and wise use of the marine environment;

(5) Facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities;

(6) Develop and implement coordinated plans for the protection and management of these areas with appropriate Federal agencies, State and local governments, Native American tribes and organizations, international organizations, and other public and private interests concerned with the continuing health and resilience of these marine areas;

(7) Create models of, and incentives for, ways to conserve and manage these areas;

(8) Cooperate with global programs encouraging conservation of marine resources; and

(9) Maintain, restore, and enhance living resources by providing places for species that depend upon these marine areas to survive and propagate.

(c) To the extent consistent with the policies set forth in the Act, in carrying out the Program's mission and goals:

(1) Particular attention will be given to the establishment and management of marine areas as National Marine Sanctuaries for the protection of the area's natural resource and ecosystem values; particularly for ecologically or economically important or threatened species or species assemblages, and for offshore areas where there are no existing special area protection mechanisms;

(2) The size of a National Marine Sanctuary, while highly dependent on the nature of the site's resources, will be no larger than necessary to ensure effective management;

(d) Management efforts will be coordinated to the extent practicable with other countries managing marine protected areas;

(e) Program regulations, policies, standards, guidelines, and procedures under the Act concerning the identification, evaluation, registration, and treatment of historical resources shall be consistent, to the extent practicable, with the declared national policy for the protection and preservation of these resources as stated in the National Historic Preservation Act of 1966, 16 U.S.C. 470 et seq., the Archeological and Historical Preservation Act of 1974, 16 U.S.C. 469 et seq., and the Archeological Resources Protection Act of 1979 (ARPA), 16 U.S.C. 470aa et seq. The same degree of regulatory protection and preservation planning policy extended to historical resources on land shall be extended, to the extent practicable, to historical resources in the marine environment within the boundaries of designated National Marine Sanctuaries. The management of historical resources under the

authority of the Act shall be consistent, to the extent practicable, with the Federal archeological program by consulting the Uniform Regulations, ARPA (43 CFR part 7) and other relevant Federal regulations. The Secretary of the Interior's Standards and Guidelines for Archeology may also be consulted for guidance. These guidelines are available from the Office of Ocean and Coastal Management at (301) 713-3125.

Sec. 922.3 Definitions.

Act means title III of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 16 U.S.C. 1431 et seq., also known as the National Marine Sanctuaries Act.

Active Candidate means a site selected by the Secretary from the Site Evaluation List for further consideration for possible designation as a National Marine Sanctuary.

Assistant Administrator means the Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration (NOAA), or designee.

Benthic community means the assemblage of organisms, substrate, and structural formations found at or near the bottom that is periodically or permanently covered by water.

Commercial fishing means any activity that results in the sale or trade for intended profit of fish, shellfish, algae, or corals.

Conventional hook and line gear means any fishing apparatus operated aboard a vessel and composed of a single line terminated by a combination of sinkers and hooks or lures and spooled upon a reel that may be hind- or electrically operated, hand-held or mounted. This term does not include bottom longlines.

Cultural resources means any historical or cultural feature, including archaeological sites, historic structures, shipwrecks, and artifacts.

Director means, except where otherwise specified, the Director of the Office of Ocean and Coastal Resource Management, NOAA, or designee.

Exclusive economic zone means the exclusive economic zone as defined in the Magnuson Fishery Conservation and Management Act, 16 U.S. 1801 et seq.

Fish wastes means waste materials resulting from commercial fish processing operations.

Historical resource means any resource possessing historical, cultural, archaeological or paleontological significance, including sites, contextual information, structures, districts, and objects significantly associated with or representative of earlier people, cultures, maritime heritage, and human activities and events. Historical resources include "submerged cultural resources", and also include "historical properties," as defined in the National Historic Preservation Act, as amended, and its implementing regulations, as amended.

Indian tribe means any American Indian tribe, band, group, or

community recognized as such by the Secretary of the Interior.

Injure means to change adversely, either in the short or long term, a chemical, biological or physical attribute of, or the viability of. This includes, but is not limited to, to cause the loss of or destroy.

Lightering means at-sea transfer of petroleum-based products, materials, or other matter from vessel to vessel.

Marine means those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands over which the United States exercises jurisdiction, including the exclusive economic zone, consistent with international law.

Mineral means clay, stone, sand, gravel, metalliferous ore, non-metalliferous ore, or any other solid material or other matter of commercial value.

National historic landmark means a district, site, building, structure or object designated as such by the Secretary of the Interior under the National Historic Landmarks Program (36 CFR part 65).

National Marine Sanctuary means an area of the marine environment of special national significance due to its resource or human-use values, which is designated as such to ensure its conservation and management.

Person means any private individual, partnership, corporation or other entity; or any officer, employee, agent, department, agency or instrumentality of the Federal government, of any State or local unit of government, or of any foreign government.

Regional Fishery Management Council means any fishery council established under section 302 of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq.

Sanctuary quality means any of those ambient conditions, physical-chemical characteristics and natural processes, the maintenance of which is essential to the ecological health of the Sanctuary, including, but not limited to, water quality, sediment quality and air quality.

Sanctuary resource means any living or non-living resource of a National Marine Sanctuary that contributes to the conservation, recreational, ecological, historical, research, educational, or aesthetic value of the Sanctuary, including, but not limited to, the substratum of the area of the Sanctuary, other submerged features and the surrounding seabed, carbonate rock, corals and other bottom formations, coralline algae and other marine plants and algae, marine invertebrates, brine-seep biota, phytoplankton, zooplankton, fish, seabirds, sea turtles and other marine reptiles, marine mammals and historical resources.

Secretary means the Secretary of the United States Department of Commerce, or designee.

Shunt means to discharge expended drilling cuttings and fluids near the ocean seafloor.

Site Evaluation List (SEL) means a list of selected natural and historical resource sites selected by the Secretary as qualifying for further evaluation for possible designation as National Marine Sanctuaries.

State means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern

Mariana Islands, American Samoa, the United States Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States.

Subsistence use means the customary and traditional use by rural residents of areas near or in the marine environment for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles; and for barter, if for food or non-edible items other than money, if the exchange is of a limited and non-commercial nature.

Take or taking means: (1) For any marine mammal, sea turtle, or seabird listed as either endangered or threatened pursuant to the Endangered Species Act, to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect or injure, or to attempt to engage in any such conduct; (2) For any other marine mammal, sea turtle, or seabird, to harass, hunt, capture, kill, collect or injure, or to attempt to engage in any such conduct. For the purposes of both (1) and (2) of this definition, this includes, but is not limited to, to collect any dead or injured marine mammal, sea turtle or seabird, or any part thereof; to restrain or detain any marine mammal, sea turtle or seabird, or any part thereof, no matter how temporarily; to tag any sea turtle, marine mammal or seabird; to operate a vessel or aircraft or to do any other act that results in the disturbance or molestation of any marine mammal, sea turtle or seabird.

Tropical fish means fish of minimal sport and food value, usually brightly colored, often used for aquaria purposes and which lives in a direct relationship with live bottom communities.

Vessel means a watercraft of any description capable of being used as a means of transportation in/ on the waters of a Sanctuary.
[60 FR 66877, Dec. 27, 1995, as amended at 62 FR 4607, Jan. 30, 1997]

Sec. 922.4 Effect of National Marine Sanctuary designation.

The designation of a National Marine Sanctuary, and the regulations implementing it, are binding on any person subject to the jurisdiction of the United States. Designation does not constitute any claim to territorial jurisdiction on the part of the United States for designated sites beyond the U.S. territorial sea, and the regulations implementing the designation shall be applied in accordance with generally recognized principles of international law, and in accordance with treaties, conventions, and other agreements to which the United States is a party. No regulation shall apply to a person who is not a citizen, national, or resident alien of the United States, unless in accordance with:

- (a) Generally recognized principles of international law;
- (b) An agreement between the United States and the foreign state of which the person is a citizen; or
- (c) An agreement between the United States and the flag state of the foreign vessel, if the person is a crew member of the vessel.

Subpart B--Site Evaluation List (SEL)

Sec. 922.10 General.

(a) The Site Evaluation List (SEL) was established as a comprehensive list of marine sites with high natural resource values and with historical qualities of special national significance that are highly qualified for further evaluation for possible designation as National Marine Sanctuaries.

(b) The SEL is currently inactive. Criteria for inclusion of marine sites on a revised SEL will be issued, with public notice and opportunity to comment, when the Director determines that the SEL should be reactivated.

(c) Only sites on the SEL may be considered for subsequent review as active candidates for designation.

(d) Placement of a site on the SEL, or selection of a site from the SEL as an active candidate for designation as provided for in Sec. 922.21, by itself shall not subject the site to any regulatory control under the Act. Such controls may only be imposed after designation.

Subpart C--Designation of National Marine Sanctuaries

Sec. 922.20 Standards and procedures for designation.

In designating a National Marine Sanctuary, the Secretary shall apply the standards and procedures set forth in section 303 and section 304 of the Act.

Sec. 922.21 Selection of active candidates.

(a) The Secretary shall, from time to time, select a limited number of sites from the SEL for Active Candidate consideration based on a preliminary assessment of the designation standards set forth in section 303 of the Act.

(b) Selection of a site as an Active Candidate shall begin the formal Sanctuary designation-evaluation process. A notice of intent to prepare a draft environmental impact statement shall be published in the Federal Register and in newspapers in the area(s) of local concern. A brief written analysis describing the site shall be provided. The Secretary, at any time, may drop a site from consideration if the Secretary determines that the site does not meet the designation standards and criteria set forth in the Act.

Sec. 922.22 Development of designation materials.

(a) In designating a National Marine Sanctuary, the Secretary shall prepare the designation materials described in section 304 of the Act.

(b) If a proposed Sanctuary includes waters within the exclusive economic zone, the Secretary shall notify the appropriate Regional

Fishery Management Council(s) which shall have one hundred and twenty (120) days from the date of such notification to make recommendations and, if appropriate, prepare draft fishery regulations and to submit them to the Secretary. In preparing its recommendations and draft regulations, the Council(s) shall use as guidance the national standards of section 301(a) of the Magnuson Act (16 U.S.C. 1851) to the extent that they are consistent and compatible with the goals and objectives of the proposed Sanctuary designation. Fishery activities not proposed for regulation under section 304(a)(5) of the Act may be listed in the draft Sanctuary designation document as potentially subject to regulation, without following the procedures specified in section 304(a)(5) of the Act. If the Secretary subsequently determines that regulation of any such fishery activity is necessary, then the procedures specified in section 304(a)(5) of the Act shall be followed.

Sec. 922.23 Coordination with States and other Federal agencies.

(a) The Secretary shall consult and cooperate with affected States throughout the National Marine Sanctuary designation process. In particular the Secretary shall:

(1) Consult with the relevant State officials prior to selecting any site on the SEL as an Active Candidate pursuant to Sec. 922.21, especially concerning the relationship of any site to State waters and the consistency of the proposed designation with a federally approved State coastal zone management program. For the purposes of a consistency review by States with federally approved coastal zone management programs, designation of a National Marine Sanctuary is deemed to be a Federal activity, which, if affecting the State's coastal zone, must be undertaken in a manner consistent to the maximum extent practicable with the approved State coastal zone program as provided by section 307(c)(1) of the Coastal Zone Management Act of 1972, as amended, and implementing regulations at 15 CFR part 930, subpart.

(2) Ensure that relevant State agencies are consulted prior to holding any public hearings pursuant to section 304(a)(3) of the Act.

(3) Provide the Governor(s) of any State(s) in which a proposed Sanctuary would be located an opportunity to certify the designation or any of its terms as unacceptable as specified in section 304(b)(1) of the Act.

(b) The Secretary shall develop proposed regulations relating to activities under the jurisdiction of one or more other Federal agencies in consultation with those agencies.

Sec. 922.24 Congressional documents.

In designating a National Marine Sanctuary, the Secretary shall prepare and submit to Congress those documents described in section 304 of the Act.

Sec. 922.25 Designation determination and findings.

(a) In designating a National Marine Sanctuary, the Secretary shall prepare a written Designation Determination and Findings which shall include those findings and determinations described in section 303 of the Act.

(b) In addition to those factors set forth in section 303 of the Act, the Secretary, when making a designation determination, shall consider the Program's fiscal capability to manage the area as a National Marine Sanctuary.

Subpart D--Management Plan Development and Implementation

Sec. 922.30 General.

(a) The Secretary shall implement each management plan, and applicable regulations, including carrying out surveillance and enforcement activities and conducting such research, monitoring, evaluation, and education programs as are necessary and reasonable to carry out the purposes and policies of the Act.

(b) Consistent with Sanctuary management plans, the Secretary shall develop and implement site-specific contingency and emergency-response plans designed to protect Sanctuary resources. The plans shall contain alert procedures and actions to be taken in the event of an emergency such as a shipwreck or an oil spill.

Sec. 922.31 Promotion and coordination of Sanctuary use.

The Secretary shall take such action as is necessary and reasonable to promote and coordinate the use of National Marine Sanctuaries for research, monitoring, and education purposes. Such action may include consulting with Federal agencies, or other persons to promote use of one or more Sanctuaries for research, monitoring and education, including coordination with the National Estuarine Research Reserve System.

Subpart E--Regulations of General Applicability

Sec. 922.40 Purpose.

The purpose of the regulations in this subpart and in subparts F through P of this part is to implement the designations of the 11 National Marine Sanctuaries for which site specific regulations appear in subparts F through P of this part, respectively, by regulating activities affecting them, consistent with their respective terms of designation in order to protect, preserve and manage and thereby ensure the health, integrity and continued availability of the conservation, ecological, recreational, research, educational, historical and aesthetic resources and qualities of these areas. Additional purposes of the regulations implementing the designation of the Florida Keys National Marine Sanctuary are found at Sec. 922.160.

[62 FR 4607, Jan. 30, 1997]

Effective Date Note: At 62 FR 14815, Mar. 28, 1997, Sec. 922.40 was revised. A document announcing the effective date of this amendment will be published in the Federal Register. For the convenience of the user, the revised text is set forth as follows:

Sec. 922.40 Purpose.

The purpose of the regulations in this subpart and in subparts F through Q is to implement the designations of the 12 National Marine Sanctuaries for which site specific regulations appear in subparts F through Q, respectively, by regulating activities affecting them, consistent with their respective terms of designation in order to protect, preserve and manage and thereby ensure the health, integrity and continued availability of the conservation, ecological, recreational, research, educational, historical and aesthetic resources and qualities of these areas. Additional purposes of the regulations implementing the designation of the Florida Keys and Hawaiian Islands Humpback Whale National Marine Sanctuaries are found at Secs. 922.160, and 922.180, respectively.
[62 FR 14815, Mar. 28, 1997]

Sec. 922.41 Boundaries.

The boundary for each of the 11 National Marine Sanctuaries covered by this part is described in subparts F through P of this part, respectively.
[62 FR 4607, Jan. 30, 1997]

Effective Date Note: At 62 FR 14815, Mar. 28, 1997, Sec. 922.41 was revised. A document announcing the effective date of this amendment will be published in the Federal Register. For the convenience of the user, the revised text is set forth as follows:

Sec. 922.41 Boundaries.

The boundary for each of the 12 National Marine Sanctuaries covered by this part is described in subparts F through Q, respectively.
[62 FR 14815, Mar. 28, 1997]

Sec. 922.42 Allowed activities.

All activities (e.g., fishing, boating, diving, research, education) may be conducted unless prohibited or otherwise regulated in subparts F through P of this part, subject to any emergency regulations promulgated pursuant to Secs. 922.44, 922.111(c), or Sec. 922.165, subject to all prohibitions, regulations, restrictions, and conditions validly imposed by any Federal, State, or local authority of competent jurisdiction, including Federal and State fishery management authorities, and subject

to the provisions of section 312 of the Act. The Assistant Administrator may only directly regulate fishing activities pursuant to the procedure set forth in section 304(a)(5) of the NMSA.
[62 FR 4607, Jan. 30, 1997]

Effective Date Note: At 62 FR 14815, Mar. 28, 1997, Sec. 922.42 was revised. A document announcing the effective date of this amendment will be published in the Federal Register. For the convenience of the user, the revised text is set forth as follows:

Sec. 922.42 Allowed activities.

All activities (e.g., fishing, boating, diving, research, education) may be conducted unless prohibited or otherwise regulated in subparts F through Q, subject to any emergency regulations promulgated pursuant to Secs. 922.44, 922.111(c), 922.165, or 922.186, subject to all prohibitions, regulations, restrictions, and conditions validly imposed by any Federal, State, or local authority of competent jurisdiction, including Federal and State fishery management authorities, and subject to the provisions of section 312 of the Act. The Assistant Administrator may only directly regulate fishing activities pursuant to the procedure set forth in section 304(a)(5) of the NMSA.
[62 FR 14815, Mar. 28, 1997]

Sec. 922.43 Prohibited or otherwise regulated activities.

Subparts F through P of this part set forth site-specific regulations applicable to the activities specified therein.
[62 FR 4607, Jan. 30, 1997]

Effective Date Note: At 62 FR 14815, Mar. 28, 1997, Sec. 922.43 was revised. A document announcing the effective date of this amendment will be published in the Federal Register. For the convenience of the user, the revised text is set forth as follows:

Sec. 922.43 Prohibited or otherwise regulated activities.

Subparts F through Q set forth site-specific regulations applicable to the activities specified therein.
[62 FR 14815, Mar. 28, 1997]

Sec. 922.44 Emergency regulations.

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all such activities are subject to immediate temporary regulation, including prohibition. The provisions of this section do not apply to the Cordell Bank and Florida Keys National Marine Sanctuaries. See Secs. 922.111(c) and 922.165, respectively, for the authority to issue emergency regulations

with respect to those sanctuaries.
[62 FR 4607, Jan. 30, 1997]

Effective Date Note: At 62 FR 14815, Mar. 28, 1997, Sec. 922.44 was revised. A document announcing the effective date of this amendment will be published in the Federal Register. For the convenience of the user, the revised text is set forth as follows:

Sec. 922.44 Emergency Regulations.

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality, or minimize the imminent risk of such destruction, loss, or injury, any and all such activities are subject to immediate temporary regulation, including prohibition. The provisions of this section do not apply to the Cordell Bank, Florida Keys and Hawaiian Islands Humpback Whale National Marine Sanctuaries. See Secs. 922.111(c), 922.165, and 922.186, respectively, for the authority to issue emergency regulations with respect to those sanctuaries.
[62 FR 14815, Mar. 28, 1997]

Sec. 922.45 Penalties.

(a) Each violation of the NMSA or FKNMSPA, any regulation in this part, or any permit issued pursuant thereto, is subject to a civil penalty of not more than \$ 100,000. Each day of a continuing violation constitutes a separate violation.

(b) Regulations setting forth the procedures governing administrative proceedings for assessment of civil penalties, permit sanctions, and denials for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear at 15 CFR part 904.

[60 FR 66877, Dec. 27, 1995, as amended at 62 FR 4607, Jan. 30, 1997]

Sec. 922.46 Response costs and damages.

Under section 312 of the Act, any person who destroys, causes the loss of, or injures any Sanctuary resource is liable to the United States for response costs and damages resulting from such destruction, loss or injury, and any vessel used to destroy, cause the loss of, or injure any Sanctuary resource is liable in rem to the United States for response costs and damages resulting from such destruction, loss or injury.

Sec. 922.47 Pre-existing authorizations or rights and certifications of pre-existing authorizations or rights.

(a) Leases, permits, licenses, or rights of subsistence use or access in existence on the date of designation of any National Marine Sanctuary shall not be terminated by the Director. The Director may, however,

regulate the exercise of such leases, permits, licenses, or rights consistent with the purposes for which the Sanctuary was designated.

(b) The prohibitions listed in subparts F through P of this part do not apply to any activity authorized by a valid lease, permit, license, approval or other authorization in existence on the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in this subpart P, and issued by any Federal, State or local authority of competent jurisdiction, or by any valid right of subsistence use or access in existence on the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in subpart P, provided that the holder of such authorization or right complies with certification procedures and criteria promulgated at the time of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in subpart P of this part, and with any terms and conditions on the exercise of such authorization or right imposed by the Director as a condition of certification as the Director deems necessary to achieve the purposes for which the Sanctuary was designated.

[60 FR 66877, Dec. 27, 1995, as amended at 62 FR 4607, Jan. 30, 1997]

Sec. 922.48 National Marine Sanctuary permits--application procedures and issuance criteria.

(a) A person may conduct an activity prohibited by subparts F through O of this part if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under this section and subparts F through O of this part. For the Florida Keys National Marine Sanctuary, a person may conduct an activity prohibited by subpart P if conducted in accordance with the scope, purpose, terms and conditions of a permit issued under Sec. 922.166.

(b) Applications for permits to conduct activities otherwise prohibited by subparts F through O of this part should be addressed to the Director and sent to the address specified in subparts F through O of this part. An application must include:

(1) A detailed description of the proposed activity including a timetable for completion;

(2) The equipment, personnel and methodology to be employed;

(3) The qualifications and experience of all personnel;

(4) The potential effects of the activity, if any, on Sanctuary resources and qualities; and

(5) Copies of all other required licenses, permits, approvals or other authorizations.

(c) Upon receipt of an application, the Director may request such additional information from the applicant as he or she deems necessary to act on the application and may seek the views of any persons or entity, within or outside the Federal government, and may hold a public hearing, as deemed appropriate.

(d) The Director, at his or her discretion, may issue a permit,

subject to such terms and conditions as he or she deems appropriate, to conduct a prohibited activity, in accordance with the criteria found in subparts F through O. The Director shall further impose, at a minimum, the conditions set forth in the relevant subpart.

(e) A permit granted pursuant to this section is nontransferable.

(f) The Director may amend, suspend, or revoke a permit issued pursuant to this section for good cause. The Director may deny a permit application pursuant to this section, in whole or in part, if it is determined that the permittee or applicant has acted in violation of the terms and conditions of a permit or of the regulations set forth in this section or subparts F through O or for other good cause. Any such action shall be communicated in writing to the permittee or applicant by certified mail and shall set forth the reason(s) for the action taken. Procedures governing permit sanctions and denials for enforcement reasons are set forth in subpart D of 15 CFR part 904.

[60 FR 66877, Dec. 27, 1995, as amended at 62 FR 4607, Jan. 30, 1997]

Sec. 922.49 Notification and review of applications for leases, licenses, permits, approvals, or other authorizations to conduct a prohibited activity.

(a) A person may conduct an activity prohibited by subparts L through P of this part if such activity is specifically authorized by any valid Federal, State, or local lease, permit, license, approval, or other authorization issued after the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary after the effective date of the regulations in subpart P of this part, provided that:

(1) The applicant notifies the Director, in writing, of the application for such authorization (and of any application for an amendment, renewal, or extension of such authorization) within fifteen (15) days of the date of filing of the application or the effective date of Sanctuary designation, or in the case of the Florida Keys National Marine Sanctuary the effective date of the regulations in subpart P of this part, whichever is later;

(2) The applicant complies with the other provisions of this Sec. 922.49;

(3) The Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization (or amendment, renewal, or extension); and

(4) The applicant complies with any terms and conditions the Director deems reasonably necessary to protect Sanctuary resources and qualities.

(b) Any potential applicant for an authorization described in paragraph (a) of this section may request the Director to issue a finding as to whether the activity for which an application is intended to be made is prohibited by subparts L through P of this part.

(c) Notification of filings of applications should be sent to the Director, Office of Ocean and Coastal Resource Management at the address

specified in subparts L through P of this part. A copy of the application must accompany the notification.

(d) The Director may request additional information from the applicant as he or she deems reasonably necessary to determine whether to object to issuance of an authorization described in paragraph (a) of this section, or what terms and conditions are reasonably necessary to protect Sanctuary resources and qualities. The information requested must be received by the Director within 45 days of the postmark date of the request. The Director may seek the views of any persons on the application.

(e) The Director shall notify, in writing, the agency to which application has been made of his or her pending review of the application and possible objection to issuance. Upon completion of review of the application and information received with respect thereto, the Director shall notify both the agency and applicant, in writing, whether he or she has an objection to issuance and what terms and conditions he or she deems reasonably necessary to protect Sanctuary resources and qualities, and reasons therefor.

(f) The Director may amend the terms and conditions deemed reasonably necessary to protect Sanctuary resources and qualities whenever additional information becomes available justifying such an amendment.

(g) Any time limit prescribed in or established under this Sec. 922.49 may be extended by the Director for good cause.

(h) The applicant may appeal any objection by, or terms or conditions imposed by, the Director to the Assistant Administrator or designee in accordance with the provisions of Sec. 922.50.

[62 FR 4608, Jan. 30, 1997]

Sec. 922.50 Appeals of administrative action.

(a)(1) Except for permit actions taken for enforcement reasons (see subpart D of 15 CFR part 904 for applicable procedures), an applicant for, or a holder of, a National Marine Sanctuary permit; an applicant for, or a holder of, a Special Use permit pursuant to section 310 of the Act; a person requesting certification of an existing lease, permit, license or right of subsistence use or access under Sec. 922.47; or, for those Sanctuaries described in subparts L through P, an applicant for a lease, permit, license or other authorization issued by any Federal, State, or local authority of competent jurisdiction (hereinafter appellant) may appeal to the Assistant Administrator:

(i) The granting, denial, conditioning, amendment, suspension or revocation by the Director of a National Marine Sanctuary or Special Use permit;

(ii) The conditioning, amendment, suspension or revocation of a certification under Sec. 922.47; or

(iii) For those Sanctuaries described in subparts L through P, the objection to issuance of or the imposition of terms and conditions on a lease, permit, license or other authorization issued by any Federal, State, or local authority of competent jurisdiction.

(2) For those National Marine Sanctuaries described in subparts F through K, any interested person may also appeal the same actions described in paragraphs (a)(1) (i) and (ii) of this section. For appeals arising from actions taken with respect to these National Marine Sanctuaries, the term "appellant" includes any such interested persons.

(b) An appeal under paragraph (a) of this section must be in writing, state the action(s) by the Director appealed and the reason(s) for the appeal, and be received within 30 days of receipt of notice of the action by the Director. Appeals should be addressed to the Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA 1305 East-West Highway, 13th Floor, Silver Spring, MD 20910.

(c)(1) The Assistant Administrator may request the appellant to submit such information as the Assistant Administrator deems necessary in order for him or her to decide the appeal. The information requested must be received by the Assistant Administrator within 45 days of the postmark date of the request. The Assistant Administrator may seek the views of any other persons. For the Monitor National Marine Sanctuary, if the appellant has requested a hearing, the Assistant Administrator shall grant an informal hearing. For all other National Marine Sanctuaries, the Assistant Administrator may determine whether to hold an informal hearing on the appeal. If the Assistant Administrator determines that an informal hearing should be held, the Assistant Administrator may designate an officer before whom the hearing shall be held.

(2) The hearing officer shall give notice in the Federal Register of the time, place and subject matter of the hearing. The appellant and the Director may appear personally or by counsel at the hearing and submit such material and present such arguments as deemed appropriate by the hearing officer. Within 60 days after the record for the hearing closes, the hearing officer shall recommend a decision in writing to the Assistant Administrator.

(d) The Assistant Administrator shall decide the appeal using the same regulatory criteria as for the initial decision and shall base the appeal decision on the record before the Director and any information submitted regarding the appeal, and, if a hearing has been held, on the record before the hearing officer and the hearing officer's recommended decision. The Assistant Administrator shall notify the appellant of the final decision and the reason(s) therefore in writing. The Assistant Administrator's decision shall constitute final agency action for the purpose of the Administrative Procedure Act.

(e) Any time limit prescribed in or established under this section other than the 30-day limit for filing an appeal may be extended by the Assistant Administrator or hearing office for good cause.

[60 FR 66877, Dec. 27, 1995, as amended at 62 FR 4608, Jan. 30, 1997]

Subpart L--Flower Garden Banks National Marine Sanctuary
Sec. 922.120 Boundary.

The Flower Garden Banks National Marine Sanctuary (the Sanctuary)

consists of two separate areas of ocean waters over and surrounding the East and West Flower Garden Banks, and the submerged lands thereunder including the Banks, in the northwestern Gulf of Mexico. The area designated at the East Bank is located approximately 120 nautical miles (NM) south-southwest of Cameron, Louisiana, and encompasses 19.20 NM², and the area designated at the West Bank is located approximately 110 NM southeast of Galveston, Texas, and encompasses 22.50 NM². The two areas encompass a total of 41.70 NM² (143.21 square kilometers). The boundary coordinates for each area are listed in appendix A to this subpart.

Sec. 922.121 Definitions.

In addition to those definitions found at Sec. 922.3, the following definition applies to this subpart:

No-activity zone means one of the two geographic areas delineated by the Department of the Interior in stipulations for OCS lease sale 112 over and surrounding the East and West Flower Garden Banks as areas in which activities associated with exploration for, development of, or production of hydrocarbons are prohibited. The precise coordinates of these areas are provided in appendix B of this subpart. These particular coordinates define the geographic scope of the "no-activity zones" for purposes of the regulations in this subpart. These coordinates are based on the "1/4 1/4 1/4" system formerly used by the Department of the Interior, a method that delineates a specific portion of a block rather than the actual underlying isobath.

Sec. 922.122 Prohibited or otherwise regulated activities.

(a) Except as specified in paragraphs (c) through (h) of this section, the following activities are prohibited and thus are unlawful for any person to conduct or to cause to be conducted:

(1) Exploring for, developing, or producing oil, gas or minerals except outside of all no-activity zones and provided all drilling cuttings and drilling fluids are shunted to the seabed through a downpipe that terminates an appropriate distance, but no more than ten meters, from the seabed.

(2)(i) Anchoring or otherwise mooring within the Sanctuary a vessel greater than 100 feet (30.48 meters) in registered length.

(ii) Anchoring a vessel of less than or equal to 100 feet (30.48 meters) in registered length within an area of the Sanctuary where a mooring buoy is available.

(iii) Anchoring a vessel within the Sanctuary using more than fifteen feet (4.57 meters) of chain or wire rope attached to the anchor.

(iv) Anchoring a vessel within the Sanctuary using anchor lines (exclusive of the anchor chain or wire rope permitted by paragraph (a)(4) of this section) other than those of a soft fiber or nylon, polypropylene, or similar material.

(3)(i) Discharging or depositing, from within the boundaries of the Sanctuary, any material or other matter except:

(A) Fish, fish parts, chumming materials or bait used in or resulting from fishing with conventional hook and line gear in the Sanctuary;

(B) Biodegradable effluents incidental to vessel use and generated by marine sanitation devices approved in accordance with section 312 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1322;

(C) Water generated by routine vessel operations (e.g., cooling water, deck wash down, and graywater as defined by section 312 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1322) excluding oily wastes from bilge pumping;

(D) Engine exhaust; or

(E) In areas of the Sanctuary outside the no-activity zones, drilling cuttings and drilling fluids necessarily discharged incidental to the exploration for, development of, or production of oil or gas in those areas and in accordance with the shunting requirements of paragraph (a)(1) unless such discharge injures a Sanctuary resource or quality.

(ii) Discharging or depositing, from beyond the boundaries of the Sanctuary, any material or other matter, except those listed in paragraphs (a)(3)(i) (A) through (D) of this section, that subsequently enters the Sanctuary and injures a Sanctuary resource or quality.

(4) Drilling into, dredging or otherwise altering the seabed of the Sanctuary (except by anchoring); or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary.

(5) Injuring or removing, or attempting to injure or remove, any coral or other bottom formation, coralline algae or other plant, marine invertebrate, brine-seep biota or carbonate rock within the Sanctuary.

(6) Taking any marine mammal or turtle within the Sanctuary, except as permitted by regulations, as amended, promulgated under the Marine Mammal Protection Act, as amended, 16 U.S.C. 1361 et seq., and the Endangered Species Act, as amended, 16 U.S.C. 1531 et seq.

(7) Injuring, catching, harvesting, collecting or feeding, or attempting to injure, catch, harvest, collect or feed, any fish within the Sanctuary by use of bottom longlines, traps, nets, bottom trawls or any other gear, device, equipment or means except by use of conventional hook and line gear.

(8) Possessing within the Sanctuary (regardless of where collected, caught, harvested or removed), except for valid law enforcement purposes, any carbonate rock, coral or other bottom formation, coralline algae or other plant, marine invertebrate, brine-seep biota or fish (except for fish caught by use of conventional hook and line gear).

(9) Possessing or using within the Sanctuary, except possessing while passing without interruption through it or for valid law enforcement purposes, any fishing gear, device, equipment or means except conventional hook and line gear.

(10) Possessing, except for valid law enforcement purposes, or using explosives or releasing electrical charges within the Sanctuary.

(b) If any valid regulation issued by any Federal authority of competent jurisdiction, regardless of when issued, conflicts with a

Sanctuary regulation, the regulation deemed by the Director as more protective of Sanctuary resources and qualities shall govern.

(c) The prohibitions in paragraphs (a)(2) (i), (iii), and (iv), (4) and (10) of this section do not apply to necessary activities conducted in areas of the Sanctuary outside the no-activity zones and incidental to exploration for, development of, or production of oil or gas in those areas.

(d) The prohibitions in paragraphs (a) (2) through (10) of this section do not apply to activities necessary to respond to emergencies threatening life, property, or the environment.

(e)(1) The prohibitions in paragraphs (a) (2) through (10) of this section do not apply to activities being carried out by the Department of Defense as of the effective date of Sanctuary designation (January 18, 1994). Such activities shall be carried out in a manner that minimizes any adverse impact on Sanctuary resources and qualities. The prohibitions in paragraphs (a) (2) through (10) of this section do not apply to any new activities carried out by the Department of Defense that do not have the potential for any significant adverse impacts on Sanctuary resources or qualities. Such activities shall be carried out in a manner that minimizes any adverse impact on Sanctuary resources and qualities. New activities with the potential for significant adverse impacts on Sanctuary resources or qualities may be exempted from the prohibitions in paragraphs (a) (2) through (10) of this section by the Director after consultation between the Director and the Department of Defense. If it is determined that an activity may be carried out, such activity shall be carried out in a manner that minimizes any adverse impact on Sanctuary resources and qualities.

(2) In the event of threatened or actual destruction of, loss of, or injury to a Sanctuary resource or quality resulting from an untoward incident, including but not limited to spills and groundings, caused by a component of the Department of Defense, the cognizant component shall promptly coordinate with the Director for the purpose of taking appropriate actions to respond to and mitigate the harm and, if possible, restore or replace the Sanctuary resource or quality.

(f) The prohibitions in paragraphs (a) (2) through (10) of this section do not apply to any activity executed in accordance with the scope, purpose, terms, and conditions of a National Marine Sanctuary permit issued pursuant to Sec. 922.48 and Sec. 922.123 or a Special Use permit issued pursuant to section 310 of the Act.

(g) The prohibitions in paragraphs (a) (2) through (10) of this section do not apply to any activity authorized by any lease, permit, license, approval or other authorization issued after January 18, 1994, provided that the applicant complies with Sec. 922.49, the Director notifies the applicant and authorizing agency that he or she does not object to issuance of the authorization, and the applicant complies with any terms and conditions the Director deems necessary to protect Sanctuary resources and qualities.

(h) Notwithstanding paragraphs (f) and (g) of this section, in no event may the Director issue a National Marine Sanctuary permit under

Sec. 922.48 and Sec. 922.123 or a Special Use permit under section 10 of the Act authorizing, or otherwise approve, the exploration for, development of, or production of oil, gas or minerals in a no-activity zone. Any leases, permits, approvals, or other authorizations authorizing the exploration for, development of, or production of oil, gas or minerals in a no-activity zone and issued after the January 18, 1994 shall be invalid.

Sec. 922.123 Permit procedures and criteria.

(a) A person may conduct an activity prohibited by Sec. 922.122(a) (2) through (10) if conducted in accordance with the scope, purpose, terms, and conditions of a permit issued under this section and Sec. 922.48.

(b) Applications for such permits should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Manager, Flower Garden Banks National Marine Sanctuary, 1716 Briarcrest Drive, Suite 702, Bryan, TX 77802.

(c) The Director, at his or her discretion, may issue a permit, subject to such terms and conditions as he or she deems appropriate, to conduct an activity prohibited by Sec. 922.122(a) (2) through (10), if the Director finds that the activity will: further research related to Sanctuary resources; further the educational, natural or historical resource value of the Sanctuary; further salvage or recovery operations in or near the Sanctuary in connection with a recent air or marine casualty; or assist in managing the Sanctuary. In deciding whether to issue a permit, the Director shall consider such factors as: the professional qualifications and financial ability of the applicant as related to the proposed activity; the duration of the activity and the duration of its effects; the appropriateness of the methods and procedures proposed by the applicant for the conduct of the activity; the extent to which the conduct of the activity may diminish or enhance Sanctuary resources and qualities; the cumulative effects of the activity; and the end value of the activity. In addition, the Director may consider such other factors as he or she deems appropriate.

(d) It shall be a condition of any permit issued that the permit or a copy thereof be displayed on board all vessels or aircraft used in the conduct of the activity.

(e) The Director may, inter alia, make it a condition of any permit issued that any information obtained under the permit be made available to the public.

(f) The Director may, inter alia, make it a condition of any permit issued that a NOAA official be allowed to observe any activity conducted under the permit and/or that the permit holder submit one or more reports on the status, progress, or results of any activity authorized by the permit.

Appendix A to Subpart L of Part 922--Flower Garden Banks National Marine Sanctuary Boundary Coordinates

The boundary coordinates are based on geographic positions of the North American Datum of 1927 (NAD 27).

Point No.	Latitude	Longitude
East Flower Garden Bank		
E-1.....	27 deg.52'52.13"	93 deg.37'40.52"
E-2.....	27 deg.53'33.81"	93 deg.38'22.33"
E-3.....	27 deg.55'13.31"	93 deg.38'39.07"
E-4.....	27 deg.57'30.14"	93 deg.38'32.26"
E-5.....	27 deg.58'27.79"	93 deg.37'42.93"
E-6.....	27 deg.59'00.29"	93 deg.35'29.56"
E-7.....	27 deg.58'59.23"	93 deg.35'09.91"
E-8.....	27 deg.55'20.23"	93 deg.34'13.75"
E-9.....	27 deg.54'03.35"	93 deg.34'18.42"
E-10.....	27 deg.53'25.95"	93 deg.35'03.79"
E-11.....	27 deg.52'51.14"	93 deg.36'57.59"
West Flower Garden Bank		
W-1.....	27 deg.49'09.24"	93 deg.50'43.35"
W-2.....	27 deg.50'10.23"	93 deg.52'07.96"
W-3.....	27 deg.51'13.14"	93 deg.52'50.68"
W-4.....	27 deg.51'31.24"	93 deg.52'49.79"
W-5.....	27 deg.52'49.55"	93 deg.52'21.89"
W-6.....	27 deg.54'59.08"	93 deg.49'41.87"
W-7.....	27 deg.54'57.08"	93 deg.48'38.52"
W-8.....	27 deg.54'33.46"	93 deg.47'10.36"
W-9.....	27 deg.54'13.51"	93 deg.46'48.96"
W-10.....	27 deg.53'7.67"	93 deg.46'50.67"
W-11.....	27 deg.52'56.44"	93 deg.47'14.10"
W-12.....	27 deg.50'38.31"	93 deg.47'22.86"
W-13.....	27 deg.49'11.23"	93 deg.48'42.59"

Appendix B to Subpart L of Part 922-- Coordinates for the Department of the Interior Topographic Lease Stipulations for OCS Lease Sale 112

East Flower Garden Bank

Block A-366

SE\1/4\, SW\1/4\; S\1/2\, NE\1/4\, SE\1/4\; SE\1/4\, NW\1/4\, SE\1/4\; S\1/2\, SE\1/4\;

Block A-367

W\1/2\, NW\1/4\, SW\1/4\; SW\1/4\, W\1/4\, SW\1/4\.

Block A-374

W\1/2\, NW\1/4\, NW\1/4\; W\1/2\, SW\1/4\, NW\1/4\; SE\1/4\,
SW\1/4\, NW\1/4\; SW\1/4\, NE\1/4\, SW\1/4\; W\1/2\, SW\1/4\;
W\1/2\, SE\1/4\, SW\1/4\; SE\1/4\, SE\1/4\, SW\1/4\.

Block A-375

E\1/2\; E\1/2\, NW\1/4\, NW\1/4\, SW\1/4\, NW\1/4\, NW\1/4\;
E\1/2\, SW\1/4\, NW\1/4\; NW\1/4\, SW\1/4\, NW\1/4\, SW\1/4\;

Block A-388

NE\1/4\; E\1/2\, NW\1/4\; E\1/2\, NW\1/4\, NW\1/4\; NE\1/4\,
SW\1/4\, NW\1/4\; E\1/2\, SW\1/4\; E\1/2\, NE\1/4\, SW\1/4\;
NW\1/4\, NE\1/4\, SW\1/4\; NE\1/4\, NW\1/4\, SW\1/4\; NE\1/4\,
SE\1/4\, SW\1/4\; NE\1/4\; NE\1/4\, SE\1/4\; W\1/2\, NE\1/4\,
SE\1/4\; NW\1/4\, SE\1/4\; NE\1/4\, SW\1/4\, SE\1/4\;

Block A-389

NE\1/4\, NW\1/4\; NW\1/4\, NW\1/4\; SW\1/4\, NW\1/4\; NE\1/4\,
SE\1/4\, NW\1/4\; W\1/2\, SE\1/4\, NW\1/4\; N\1/2\, NW\1/4\,
SW\1/4\.

West Flower Garden Bank

Block A-383

E\1/2\, SE\1/4\, SE\1/4\; SW\1/2\, SE\1/4\, SE\1/4\.

Block A-384

W\1/2\, SW\1/4\, NE\1/4\; SE\1/4\, SW\1/4\, NE\1/4\; S\1/2\,
SE\1/4\, NE\1/4\; SE\1/4\, NW\1/4\; E\1/2\, SW\1/4\; E\1/2\,
NW\1/4\, SW\1/4\; SW\1/4\, NW\1/4\, SW\1/4\; SW\1/4\, SW\1/4\;
SE\1/4\.

Block A-385

SW\1/4\, SW\1/4\, NW\1/4\; N\1/4\, SW\1/4\; NW\1/4\, SW\1/4\,
SW\1/4\.

Block A-397

W\1/2\, W\1/2\, NW\1/4\; W\1/2\, NW\1/4\, SW\1/4\; NW\1/4\,
SW\1/4\, SW\1/4\.

Block A-398

Entire block

Block A-399

E\1/2\; SE\1/4\, NE\1/4\, NW\1/4\; E\1/2\, SE\1/4\, NW\1/4\;
E\1/2\, NE\1/4\, SW\1/4\; SW\1/4\, NE\1/4\, SW\1/4\; NE\1/4\,
SE\1/4\, SW\1/4\.

Block A-401

NE\1/4\, NE\1/4\; N\1/2\, NW\1/4\, NE\1/4\; NE\1/4\, SE\1/4\,
NE\1/4\.

Block A-Block 134

That portion of the block north of a line connecting points 17 and
18, defined under the universal transverse mercator grid system as
follows: Point 17; X=1,378,080.00'; Y=10,096,183.00'; Point 18: X=1,376,079.41';
Y=10,096,183.00'; Block A-135

That portion of the block northwest of a line connecting points 16
and 17, defined under the universal transverse mercator grid system as
follows: Point 16: X=1,383,293.84'; Y=10,103,281.93'; Point 17:

X=1,378,080.00'; Y=10,096,183.00'.